

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**CARRI COLLINGWOOD, individually;
as ADMINISTRATRIX of the ESTATE of
SHAWN M. COLLINGWOOD, deceased;
and as parent and natural guardian of
CAITLIN COLLINGWOOD, a minor and
CARLENE COLLINGWOOD, a minor,**

Plaintiffs,

vs.

**JOHN MILNER, CONSOL
PENNSYLVANIA COAL COMPANY,
EICKHOFF CORPORATION and
O'BRIENS RENT ALL AND SALES, INC.,**

Defendants.

2:07cv924
Electronic Filing

MEMORANDUM ORDER

AND NOW, this 5th day of December, 2007, upon due consideration of defendant Eickhoff Corporation's partial motion to dismiss and plaintiffs' response thereto, IT IS ORDERED that the motion be, and the same hereby is, denied.

In considering a motion to dismiss, this Court must accept plaintiff's factual allegations as true, and view all reasonable inferences therefrom in a light most favorable to the non-moving party. General Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 325 (3d Cir. 2001). The Federal Rules of Civil Procedure require a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief," which must provide enough facts to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Fed.R.Civ.P. 8(a)(2).

Under Pennsylvania law, an award for punitive damages requires a showing of outrageous conduct that involves an "evil motive or . . . reckless indifference to the rights of others." Phillips v. Cricket Lighters, 584 Pa. 179, 883 A.2d 439, 445 (2005)(citing Martin v.

Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088, 1096-98 (1985)); Golden ex rel. Golden v. Golden, 382 F.3d 348, 356 (3d Cir. 2004)(applying Pennsylvania law). In this case, plaintiff has pleaded sufficient facts that, if accepted as true, could permit a reasonable jury to find that defendant's alleged agent, by willful, wanton or reckless conduct, caused the death of the deceased. Therefore, it would be appropriate and permissible, after such a finding, for the jury to award punitive damages. Accordingly, defendant's motion to dismiss must be denied.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

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